

Harvey Weintraub HIGHLY CONFIDENTIAL - UNDER PROTECTIVE ORDER August 25, 2005
Kenilworth, NJ

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

MDL NO. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

x-----x

IN RE: PHARMACEUTICAL INDUSTRY: VIDEOTAPE

AVERAGE WHOLESALE PRICE : DEPOSITION OF:

LITIGATION : HARVEY

_____: WEINTRAUB

:

:

THIS DOCUMENT RELATES TO :

ALL CLASS ACTIONS :

:

x-----x

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1 AWP or average wholesale pricing?

2 MR. KAUFMAN: Object to the form of
3 the question.

4 You may answer.

5 A. By utilizing it, we supplied an AWP on
6 every product. That was standard practice and
7 required by the people with whom we dealt.

8 Q. And that would also be included in
9 any of the contracting with the Managed Care
10 groups that you've described?

11 A. I'm not sure --

12 MR. KAUFMAN: Object to the form of
13 the question.

14 You may answer it.

15 A. I'm not sure. By memory, I can't remember
16 whether it was required or not. Where it was
17 required by the accounts that we dealt with we
18 supplied it.

19 Q. And for that time period where you
20 were working with Managed Care or they were
21 reporting to you, what was your understanding of
22 what AWP represented?

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1 A. AWP was a reference price, a sticker price
2 that was required by the pricing services and
3 required by our accounts and it was supplied on
4 that basis.

5 MR. McNEELY: Okay. I'm going to ask
6 the court reporter to please mark this as
7 Exhibit Weintraub 001. Deposition this date.

8 And if you would mark it and hand to it Mr.
9 Kaufman, please.

10 MR. KAUFMAN: Thanks. And Mr.
11 McNeely explained beforehand that he only had an
12 opportunity to make one copy so I need to look at
13 it before you give it to the witness. Thank you.

14 (A document entitled Pricing is
15 received and marked Exhibit Weintraub 001 for
16 identification.)

17 Q. Mr. Weintraub, if you would refer
18 to the exhibit in front of you, which is marked
19 Exhibit Weintraub 001, and do you see on that page there
20 is a definition or an explanation of average wholesale
21 price. Do you see that on that page?

22 A. Yes. I do.

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1 Q. Would you please review that?

2 And for the record, so that it might be
3 easier for the judge or the jury looking at this,
4 I'm going to read it out loud, if you just follow.

5 "Average wholesale price, AWP, is the price
6 at which the retailer purchases a product from the
7 wholesaler. This price is based upon a percentage
8 increase over the wholesaler's cost, the net cost
9 to the wholesaler plus 16 and two-thirds percent.
10 An increase over the wholesaler's cost, depending
11 upon the particular wholesaler's profit margin and
12 the volume that the retailer does with the
13 wholesaler. The actual price that the retailer
14 pays the wholesaler is usually less than 16 and
15 two-thirds percent due to the competition for
16 business among wholesalers."

17 Did I read that correctly, sir?

18 A. Yes. You did.

19 Q. Okay. Is that a definition or
20 explanation of AWP that you're familiar with?

21 A. I don't know that it's a definition, it's a
22 practice for which I'm familiar with.

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1 but I don't recall it. It's back to 2000.

2 Q. Okay. And I would ask that, I'll
3 refer you to item two on the first page, if you
4 would just, there is a question and then a
5 response. And the question is,

6 "Does Warrick report an AWP to First
7 DataBank for all its products? With what
8 frequency? How is that information communicated?"

9 And the response is,

10 "Yes, Warrick does report AWP to First
11 DataBank for all its products. It generally
12 reports them upon introduction and the information
13 is communicated in writing ."

14 Did I read that correctly, sir?

15 A. Yes. You did.

16 Q. And is that a correct statement?

17 A. That is a correct statement.

18 Q. And under Item 3, and if you would
19 just read along with me, the question is,

20 "How does Warrick determine the figure it
21 reports as the AWP for its products? What survey,
22 review, calculation or other process does this

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1 determination entail? "

2 And the response is as follows:

3 "In almost all cases, Warrick has not been
4 the first to introduce a particular generic brand.
5 When Warrick is the first to introduce a generic
6 product, it reviews the AWP of the branded
7 product, and other market information, and
8 generally sets AWP at 10 to 15 percent below the
9 brand. In other cases, Warrick generally
10 determines its AWP for a product at approximately
11 the same level as the existing AWPs for approved
12 generic equivalents."

13 Did I read that correctly, sir?

14 A. Yes. You did.

15 Q. And is that a true statement?

16 A. That is a true statement.

17 Q. And I would ask you to look at Item
18 5 on Page 2. And, of course, I'll ask you to keep
19 in mind that this letter is apparently dated June
20 21, 2000, but I'm going to read Item 5. The
21 question and then the response. The question is
22 as follows:

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1 "Who within Warrick is responsible for
2 determining AWPs? Who determines that a given AWP
3 will be submitted to First DataBank or any entity
4 outside Warrick?"

5 Response:

6 Generally, Mr. Harvey Weintraub determines
7 AWPs, sometimes in consultation with Mr. Raman
8 Kapur. The AWP for Albuterol Sulfate was set
9 before Mr. Kapur joined Warrick."

10 Did I read that correctly?

11 A. Yes. You did.

12 Q. Is that a correct statement?

13 A. To the extent that the parenthetical
14 expression sometimes in consultation with Mr.
15 Raman Kapur, actually I determined them but he
16 signed off on them.

17 Q. Now, also I understand your comment
18 that Mr. Kapur would sign off on the proposed
19 AWPs, but was there also any Schering involvement
20 in signing off on AWPs?

21 A. No.

22 Q. Would you submit the proposed

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1 practice for your --

2 A. We would notify them at the time of
3 introduction. Thereafter not.

4 Q. You would not notify any of the
5 pricing services relative to price changes?

6 A. Price changes to the accounts?

7 Q. Well, let me clarify it. Changes
8 in AWP.

9 A. We would notify them of a change in AWP.

10 Q. Did Warrick provide First DataBank
11 or any of the pricing services with direct price
12 or invoice pricing?

13 A. Not as a general rule, no.

14 (A document entitled Price Change
15 is received and marked as Exhibit Weintraub 009 for
16 identification.)

17 MR. MCNEELY: Actually, the second
18 page should have a separate exhibit sticker. I'm
19 sorry. Would you please mark the second page as
20 Exhibit Weintraub 010?

21 (A document entitled Price Change
22 is received and marked as Exhibit Weintraub 010 for

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1 identification.)

2 Q. Mr. Weintraub, if you would please
3 take a moment to review Exhibit Weintraub 009 and
4 Exhibit Weintraub 010 and please explain, if you
5 would, or identify them and then how they differ from
6 the notification to the First DataBank and Pricing
7 Services?

8 A. These are, appear sometime after the
9 introduction of the product for one thing. And at
10 this point, these are notifications of a price
11 change to the inhalation aerosol and the refill in
12 terms of the price at which the accounts, here in
13 the case of Bergen and the other one in the case
14 of CVS, I would say purchased the product.

15 Q. And also on Exhibit Weintraub 009 there
16 is terms. Are those terms being offered by this price
17 change document or are they in reference to another
18 agreement?

19 A. The market share program would be in
20 reference probably to another agreement.

21 Q. Now, would Exhibit Weintraub 009 and
22 Exhibit Weintraub 010, are these offers by Warrick to

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1 sell at this price and under these terms?

2 A. They're specific to each account. They met
3 the competition. And one is for a chain and one
4 is for a wholesaler. We met the competition and,
5 obviously, at Bergen and changed our direct price
6 to meet the competition. Same was done at CVS.
7 They had two different prices because the
8 competition was different in each case.

9 Q. Now, we can put those aside, if you
10 will, and I would like just to go back and talk
11 about the beginnings of Warrick, tap into your
12 institutional memory a bit.

13 It's my understanding that Warrick was a
14 creation by Schering or Schering-Plough. Is that
15 correct?

16 A. I guess, what do you mean by creation?

17 Q. The planning, the strategies
18 related to that it resulted in the creation of
19 Warrick came out of Schering and Schering-Plough?

20 A. That's correct.

21 Q. And is it correct there were a
22 number of people who worked on the planning and

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1 strategies in creating Warrick?

2 A. I believe so.

3 Q. Who is, and you may help me with
4 the name, James Audibert?

5 A. James Audibert.

6 Q. Audibert?

7 A. Yeah. It's French extraction but
8 pronunciation is strictly American.

9 Q. Okay. Was Mr. Audibert involved
10 with some of the strategy and planning of creating
11 Warrick?

12 A. Yes. He was.

13 Q. Can you tell me who he is and what
14 his participation was?

15 A. He worked in the Schering's Marketing
16 Department and apparently made some
17 recommendations for the establishment of Warrick
18 along with some other people.

19 Q. Okay. And were you in the loop, I
20 guess for lack of a better word, as being given
21 some of the early planning and strategy papers
22 about the creation of Warrick?

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1 to \$5, for all inventory on hand that person would
2 get a \$5 credit.

3 Q. Okay. You referred or described a
4 standard practice in the industry relative to
5 inventory adjustment. Was that, in fact, the
6 practice of Warrick?

7 A. Yes. It was.

8 MR. MCNEELY: Would you please mark
9 this as Exhibit Weintraub 031.

10 (A document entitled Price Change
11 is received and marked as Exhibit Weintraub 031 for
12 identification.)

13 Q. Mr. Weintraub, you've been handed
14 what has been marked as Exhibit Weintraub 031. That
15 is also apparently a price change that was sent to
16 Walgreen's. Is that correct?

17 A. That is correct.

18 Q. And if you would, I'd like to
19 direct your attention to the apparent date of the
20 price change and the effective dates.

21 Do you see that?

22 A. Yes. I do.

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1 Q. And the price change notice appears
2 to be dated November 21, 1996, but has effective
3 dates back to March and April for these products.
4 Do you see that?

5 A. Yes. I do.

6 Q. Can you explain how that would work
7 where the effective date would go back for
8 approximately six or seven months?

9 A. I am not sure unless there is a clerical
10 error somewhere and the change didn't go through.
11 I'm not quite sure. It's not usual, I will say
12 that. But I don't know. There should be some
13 backup to this and I guess there isn't.

14 Q. Thank you. Now, in your dealings
15 with Walgreen's, either with Schering or with
16 Warrick, would you provide Walgreen's with
17 profitability calculations regarding the sale of
18 Schering or Warrick products relative to
19 reimbursements either from Medicaid or other third
20 party payers?

21 A. I never did.

22 Q. Are you aware of other persons in

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1 Schering or Warrick who would have made such
2 calculations available?

3 A. I would not know about Schering. Certainly
4 not at Warrick. When I was at Schering, to my
5 knowledge, it never took place. At least that I
6 was in any way aware of.

7 Q. Do you know a Sheila Bennett at
8 Walgreen's?

9 A. Yes. I do.

10 Q. And what is her position, if you
11 know?

12 A. I don't know what it is currently. At the
13 time I knew her she was in charge of buying for
14 prescription products. Brand products.

15 Q. Did you ever have any personal
16 direct dealings with Sheila Bennett?

17 A. Not directly. I knew of her. I knew
18 people who dealt with her. I would pass her
19 office as I went to Mr. Ziebell's office and say
20 hello, but I never dealt with her in any
21 substantive way.

22 Q. Do you know who Gary Calvin is?

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1 A. Yes. Gary Calvin is a trade relations
2 manager for Schering and he covers the brand
3 products. Walgreen's is his account for brand.

4 MR. MCNEELY: Would you please mark
5 that as Exhibit Weintraub 032.

6 (An e-mail dated 6-11-2002 is
7 received and marked as Exhibit Weintraub 032 for
8 identification.)

9 Q. If you would, Mr. Weintraub, would
10 you please take a moment to review Exhibit Weintraub
11 032?

12 A. Yes.

13 Q. And do you see on the second page
14 where it is entitled Pharmacy Profit Analysis:
15 Illinois Medicaid?

16 A. Yes.

17 Q. Have you ever participated in
18 preparing such analyses for either Schering-Plough
19 or Warrick?

20 A. No. If you will look at the products
21 listed here they're long after my departure from
22 Schering as an employee.